

MEMORANDUM

To: Rev. Philip L. Boroughs, S.J.
From: Sexual Misconduct Policy Review Committee

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Date: July 12, 2019

Introduction

Our Committee was charged with reviewing the College's Sexual Misconduct Policy; identifying issues relating to the Policy that call for improvement, either with respect to the Policy itself or with respect to the way the Policy operates or is implemented; and bringing forward for consideration by you and the Executive Team any recommendations for improvement that we may have. We were asked to prioritize our work – identifying any changes which we believe should be considered for implementation before the start of the 2019-2020 academic year and any additional issues which may warrant further consideration. Consistent with this charge, our recommendations are set forth below, in three sections:

- A. Recommended Changes to the Policy;
- B. Recommendations Relating to Implementation of the Policy;
- C. Issues for Further Consideration.

¹ Ms. Rogers no longer is at the College (her last day at Holy Cross was June 28), but she participated in all of the work reflected in this Report.

In making our recommendations, we reviewed the entire Policy as well the Title IX Q&A, paying particular attention to issues shared by committee members as those that had been raised by members of the College community, and each of the “next steps” in the Q&A.

In addition to the recommendations described below, the Committee also considered a range of other issues relating to the Policy as to which we felt no recommendation was in order. For example, we considered whether the Policy should include mandatory, minimum sanctions for certain categories of sexual misconduct, but we determined not to make any recommendation to that effect (because any particular category of sexual misconduct can encompass a wide range of behavior; any particular finding of misconduct may involve any number of significant mitigating or aggravating circumstances; and we believe that the imposition of mandatory, minimum sanctions may have a potential chilling effect on the reporting of misconduct and may improperly influence the findings of Determination Panels). For another example, we considered whether a person found responsible for sexual misconduct should have the right to appeal the sanction(s) imposed on the grounds that a sanction is excessive or otherwise improper, but we determined not to allow for an appeal on that basis (because allowing such appeals would delay the final resolution of the matter; would invite second-guessing of the Sanctioning Official’s judgment; and would be inconsistent with the approach taken by most colleges and universities).

We are pleased to note that with respect to each of the points we address in this memorandum, and those we considered but determined not to address, there was a broad consensus among the members of our Committee.

While the Committee was asked to report only to you, with the understanding that you would share our recommendations with the rest of the Executive Team, the Committee requests that you also make our report available to the broader College community. Plainly the College’s Sexual Misconduct Policy is a matter of keen and current interest to many in our community, and we believe that transparency in relation to any significant review or revision to the Policy is important to maintaining and strengthening the community’s trust in the College’s approach to issues of sexual misconduct.

Finally, the Committee notes that the College’s review of its Sexual Misconduct Policy occurs in the shadow of anticipated, significant changes to the Department of Education’s Title IX regulations. Those regulations may require the College substantially to revise various aspects of its Policy. It is important that the College be poised to address promptly and effectively any new regulations when they are

announced. On that point, we direct your attention to our recommendation below that the College consider forming a standing committee to periodically review the Policy and recommend changes as appropriate. With new federal regulations anticipated, the formation of such a Committee soon is a matter worthy of consideration in the near term.

A. RECOMMENDED CHANGES TO THE POLICY

1. The Opening Sections of the Policy

The first four sections of the Sexual Misconduct Policy broadly describe the College's commitment to non-discrimination, how the Policy serves as one part of that commitment, and the role of the Title IX Coordinator and Title IX Team. We believe these opening sections could be improved by focusing specifically on sexual misconduct, without reference to other forms of discrimination, and by emphasizing other core values and principles relating to the Policy itself and the issues that the Policy aims to address.

Some members of the College community are skeptical about the College's motivations with respect to cases of sexual misconduct. Some believe that the College would prefer that complaints not be made. Some believe that the College's principal concerns in addressing cases of sexual misconduct are to avoid litigation and publicity. Some believe that the College does not act with sufficient speed and seriousness when allegations of misconduct are substantiated. We believe a restatement, and expanded statement, of the College's core principles and goals in addressing sexual misconduct will be helpful in addressing such concerns.

Thus, for example, the Policy's opening sections could emphasize that the College affirmatively wants all members of its community to come forward to report any credible allegations of sexual misconduct, so that the College can stop the conduct from occurring, prevent it from recurring, and remedy its effects, while acknowledging that in some cases complainants/victims will wish to remain anonymous and/or not pursue formal action. For another example, the opening sections also could affirm the College's commitment that all reports of potential sexual misconduct will be addressed promptly, fairly, equitably, and thoroughly, with due regard for the rights of complainants, respondents, and witnesses.

The revised statement of core principles and goals also can serve another useful purpose: providing a touchstone for assessing what the Policy provides, how it operates in practice, and how it might be changed. Any consideration of these issues should take into account the College's core principles and goals – assessing

whether current policy or practice, or a proposed change in policy or practice, is consistent with and will help advance these principles and goals.

As noted above, we also believe that these opening sections can be improved by focusing them entirely on issues relating to sexual misconduct, rather than also addressing other forms of discrimination. It is of course important for the College to make clear its commitment to non-discrimination in any form, and to provide information about policies and resources relating to other forms of discrimination, but that information is available elsewhere and need not be restated here.

A suggested restatement of those sections is attached at **Addendum A**.

2. Conflicts of Interest for the Sanctioning Official

The Policy appropriately addresses how the Title IX Coordinator will handle conflicts of interest with respect to members of the Determination Panel (p. 25 of the Policy²) and the Appeals Panel (p. 29), but the Policy does not address this issue relative to the Sanctioning Official.

The issue of conflicts on the part of the Sanctioning Official *is* addressed in the Title IX Q&A, published at <https://www.holycross.edu/campus-climate/title-ix-qa>, which says the matter will be addressed by the Title IX Coordinator, who will appoint a different Sanctioning Official “[a]ny time that there is a determination of conflict of interest”

Language to this effect should appear in the Policy as well. Our suggested revision is attached at **Addendum B**.

3. Determining and Implementing Sanctions

a. The factors used to determine sanctions

The guidelines for determining sanctions (pp. 27-28 of the Policy) are very broad and grant substantial discretion to the Sanctioning Official. We believe the Policy would benefit from additional language about how sanctions should be determined

² The Policy citations in this memorandum refer to the PDF version of the Policy, revised as of January 22, 2019, which is available on the Sexual Respect and Title IX web page, at <https://www.holycross.edu/sexual-respect-and-title-ix/overview>. We note that the PDF version of the Policy includes some language which differs from the Policy language on the web page itself. Although the differences appear not to be substantive, we recommend that the web page be updated to make the language entirely consistent with the PDF version of the current Policy.

in individual cases, including the overarching principles that should drive the sanction decision and examples of what may constitute “aggravating” or “mitigating” circumstances. We have attached at **Addendum C** our suggested, additional language on this point, with some other, minor revisions to this section.

Related to this point, we believe it is important for the Policy to make clear that the Sanctioning Official may consult with other College officials as appropriate under the circumstances in determining the appropriate sanction. Such consultation occurs in practice. The Policy should make explicit that such consultation is permitted, as we suggest in **Addendum C**.

b. The sanctions that may be imposed on faculty

The Policy includes a discussion of sanctions that may be imposed on members of the teaching faculty (p. 27). There are other sanctions which may be appropriate in certain cases – for example, removal from administrative responsibilities or committees, reassignment of advisees, and the loss of other duties and privileges. We recommend that the Policy be amended to include these additional examples, as we indicate in **Addendum C**.

c. Notification, implementation, and monitoring of sanctions

The Policy provides that once an outcome has been determined, the Title IX Coordinator will inform the Parties and “will also inform other College officials with a legitimate educational or employment interest about the outcome of the finding” (p. 28). The Policy would benefit from additional language which explains who ordinarily will be informed as a matter of course where the respondent is a student, teaching faculty member, or other employee, as is done to some extent in the Title IX Q&A, and by new language which provides that when such a person is informed about the outcome of a case, they also will be informed that they may not disclose that information to others without the specific approval of the Title IX Coordinator. Our suggested language on these points is attached at **Addendum D**.

The Policy also would benefit from additional language which makes clear who is responsible for implementing any sanctions and who is responsible for ensuring and monitoring compliance with the sanctions where the respondent is a student, teaching faculty member, or other employee. Our suggested language on this point also is attached at **Addendum D**.

4. Interim Measures

The Policy briefly discusses the interim measures that may be available to complainants (p. 20) and respondents (p. 21) before a complaint has been resolved. There also is a brief discussion of this issue in the Q&A. The Policy states that the Title IX Coordinator is responsible for assessing and determining any interim measures. In practice, the Title IX Coordinator does so in consultation with other College personnel. We recommend that this consultation be included in the Policy itself, as indicated in the suggested language at **Addendum E**.

We also recommend that the Policy include a more expansive discussion of the circumstances in which interim measures can be appropriate – specifically, that such measures can be appropriate not only to address the “safety and health needs” of the Complaining Party, but also to preserve the Complaining Party’s ability fully to participate in his or her educational experience or employment at the College – and the types of interim sanctions that may be imposed. These suggested revisions also appear at **Addendum E**.

5. The Provost’s Role in Faculty Matters

The Policy provides that in the event a Determination Panel makes a finding of responsibility with respect to a member of the teaching faculty, the Provost/Dean of the College will determine the appropriate sanction (p. 27), provided that a recommended sanction of dismissal is subject to appeal and ultimately is subject to review by the Executive Committee of the Board (p. 33). In practice, the Provost will consult with others as appropriate in determining the sanction. Consistent with our recommendation above, on page 4, we recommend that the Policy be revised to explicitly provide for such consultation, as noted in **Addendum C**.

There may be matters in which the Provost’s role should be delegated to some other person(s), due to an actual or perceived conflict of interest, because the Provost is unavailable, or for some other reason. Delegation in the context of a conflict of interest would be addressed by the new language regarding conflict of interest relating to any Sanctioning Official, as proposed in Addendum B and discussed on page 3 above. The matter of delegation in other contexts currently is addressed in footnote 10 of the Policy (at p. 27), which says, “Consistent with Section 9(i), the Dean of the College, in consultation with the Title IX Coordinator, may designate another appropriate faculty member or administrator to serve in [the Provost’s] role.” (Section 9(i) says, in relevant part, “Where [any] College official or employee is listed as the designated point of contact for any role in the Sexual

Misconduct Policy, he or she may, in consultation with the Title IX Coordinator, designate another College official or employee to assume the role at issue, as necessary and appropriate.) Rather than allowing the Provost to delegate his or her role to “another appropriate faculty member or administrator,” we recommend that the Policy provide for delegation to “a person who currently holds a leadership position in Academic Affairs,” as we indicate in **Addendum C**. We recognize that if the person to whom the Provost’s role is delegated has not already received appropriate training relative the role of the Sanctioning Official, the Title IX Coordinator will need to arrange for that training to take place.

B. RECOMMENDATIONS RELATING TO IMPLEMENTATION OF THE POLICY

1. Enhancing Awareness and Understanding of the Policy and How it Operates

a. Summary information about the Policy

The Policy is decidedly thorough and comprehensive. It also is fair to say that it is long and dense. It will be helpful to have a succinct overview of the Policy’s key provisions, perhaps accompanied by a flow-chart or diagram which depicts the routes that individual matters can take through the various informal and formal processes that are available under the Policy. It also will be helpful to have an improved and expanded Title IX Q&A, which addresses the most important and most frequent questions that people may have about the Policy and its operation.

b. The informal resolution of complaints

The Policy provides for an optional, informal resolution procedure, which can be used to address certain types of cases (p. 21). The Committee recommends that steps be taken to increase awareness of this option, including the reasons why it is available for some types of matters but not others, and to encourage its use in appropriate cases. One place to do this is in the Title IX Q&A.

c. Coordination with other policies and procedures

The Policy explains that if the Title IX Coordinator determines that reported conduct does not implicate the Policy, the Coordinator will so inform the Complaining Party and refer the matter to the appropriate administrator for handling consistent with the relevant College policy (p. 21). The Policy also addresses how the Title IX Coordinator will address cases which involve potential

violations of both the Sexual Misconduct Policy and other College policies, with respect to both students and employees (p. 35). A summary explanation of these points should be included in the Title IX Q&A.

d. The option to accept responsibility

The Policy provides for voluntary agreements, which allow a student who is accused of misconduct to accept responsibility and the College to impose sanctions without completing the full investigation and adjudication process (p. 24). The Committee recommends that steps be taken to increase awareness of this option and to encourage its use in appropriate cases.

e. Reporting issues

The Committee believes that the College community would benefit from a greater understanding and awareness of the different ways in which allegations of sexual misconduct reach the Title IX office, as well as the reasons why some matters never reach the office. This can be addressed in the Title IX Q&A.

The Committee also believes that the College community would benefit from a greater understanding of reporting by “responsible employees” – what needs to be reported and how it is reported to the Title IX office. The Policy provides information on this issue (pp. 5, 13-14), but it also should be addressed in the Title IX Q&A and should be a topic of additional, and recurring, training for all employees.

The College also should do more to make clear *why* it wants responsible employees to come forward – so that it can stop misconduct, prevent it from recurring, and address its effects. We have included language on this point in our suggested revisions to the opening sections of the Policy (**Addendum A**).

f. The anonymous/reluctant complainant/victim

The Committee believes that the College community would benefit from a greater understanding and awareness of how the College addresses situations in which a complaining or reporting party wishes to remain anonymous or otherwise declines to participate in some or all the investigation/adjudication process. The Policy provides a fairly extensive discussion of this issue (beginning on p. 12). It also is addressed in the Title IX Q&A. We believe it may be helpful to address this issue more prominently in both the Policy and the Title IX Q&A.

2. Investigative Resources

As many schools have chosen to do, and as the proposed Title IX regulations would require, the College has adopted an investigator-driven model for addressing most allegations of sexual misconduct. For that model to be effective, the College must have ready access to capable investigators who are available to undertake and complete the work within a reasonable period. The Title IX Team has not always found that to be the case. The College already has identified the need to devote additional internal resources to the investigative role – both conducting investigations and assisting external investigators. It may need to devote additional resources to identifying and retaining external investigators or consider devoting even greater internal resources (existing or new) to this task.

3. The Time to Complete Investigations

Investigations are taking a long time to complete. This is for a number of reasons, including the time available to investigators to work on individual matters; the exhaustive approach of some investigators; and the time allowed to parties for various stages of the process, including reviewing and responding to witness lists, responding to requests for interviews, and reviewing and responding to the investigator's report. The Committee believes that more can and should be done to accomplish the timely completion of investigations without prejudice to the rights of both Complaining and Responding Parties to a fair, thorough, and effective investigation.

To the extent that delays in completion seem to be associated with particular investigators, the Title IX office should be encouraged to counsel those individuals or, if warranted, stop referring matters to them.

It also has been noted that both the Title IX office and individual investigators liberally grant extensions to parties and witnesses whenever they are requested, at all stages of the process. This should change, such that extensions are granted only for demonstrated "good cause" or the like.

It also has been noted that complaining and responding parties are permitted to identify an unlimited number of witnesses, each of whom must be interviewed as part of the investigative process. This, too, should change, such that the parties are required to demonstrate to the investigator why each witness is necessary to interview and investigators understand their authority to determine whether the evidence a witness is likely to offer will be irrelevant, cumulative, or otherwise unnecessary.

The Title IX Q&A addresses the question “why do investigations take so long?” The Committee recommends including in the Q&A an affirmative statement to the effect that the College is committed to reducing the time it takes to complete investigations, and when possible to completing investigations within the semester in which a complaint is brought forward, with due regard to the rights of both Complaining and Responding Parties to a fair, thorough, and effective investigation.

4. Determination Panels

The Title IX Office sometimes has found it difficult to identify individuals who are available and willing to serve on the three-member Determination Panel. These panelists are drawn from a pool of College faculty and other employees who are trained to decide cases pursuant to the Policy. These cases can require a significant amount of time and attention – a significant commitment above and beyond the panelists’ regular job duties. The College may wish to consider making it possible for a smaller group of panelists to devote a greater amount of time to panel service by relieving the panelists from certain job duties, or reducing those duties, during a fixed period of panel service. The formation of a Sexual Misconduct Board consisting of trained Title IX panelists, similar in function to the Community Standards Board and Committee on Academic Standing, would help address this issue.

5. Annual Report

The Title IX Office prepares an annual report relating to the cases that it handles. The Committee believes it would be appropriate to formally recognize/require in the Policy that such a report will be made. Language to this effect is included in our suggested revisions to the opening sections of the Policy, in **Addendum A**.

C. ISSUES FOR FURTHER CONSIDERATION

1. Who “owns” the Policy

Although it was the President who established our Committee and charged it with reviewing and making recommendations with respect to the Policy, it is not the President who has direct responsibility for implementing the Policy or for making any changes to it. Those responsibilities appear to rest with the Vice President for Administration and Finance, who oversees the Title IX Office. That is consistent with the approach generally taken at other institutions – i.e., ultimate responsibility for the Sexual Misconduct Policy rests with the senior administrator to whom the

Title IX Coordinator reports. The determination as to who “owns” the Policy should be a conscious one, however, not made by default.

In addition, once it is determined (or reaffirmed) which administrator, or group of administrators, will have this responsibility, it should be made explicit in the Policy itself. That should be done not only to establish accountability for the Policy, but also to establish and affirm that the person(s) with this responsibility also have the authority to take such steps as are necessary to implement, enforce, and (following appropriate consultation) revise the Policy.

2. Whether students should participate in Determination Panels for matters in which a student is the complainant or respondent

The Policy specifically prohibits student participation on Determination Panels (p. 25). That view is consistent with the Department of Education’s 2014 Title IX Q&A guidance (later rescinded by the Trump administration), which “discourage[d] schools from allowing students to serve on hearing boards in cases involving allegations of sexual violence.”

Some students believe that the College should reconsider allowing students to serve on Determination Panels in matters in which a student is the complainant or the respondent. The College may wish to do so, if it believes that student participation would lead to better outcomes (i.e., if the College believes that students will bring perspectives and insights that lead to better decision-making); enhance student trust in the College’s handling of sexual misconduct matter; or otherwise would help the College meet its core obligations under Title IX – stopping sexual misconduct, preventing its recurrence, addressing its effects, and resolving complaints of alleged misconduct in a manner that is prompt, fair and equitable. Some of these concerns also might be addressed by the establishment of a student “advisory board,” discussed in point 3 below.

The College should not consider including students if the aim would be merely to provide a learning experience for students, or the like. The College also should carefully consider the privacy and confidentiality implications of student participation, especially on a smaller campus like Holy Cross, including whether complaining parties will be deterred from coming forward if they know a student will be on his or panel and thus see all of the information relating to the case. The College also should consider the possibility that students who participate on panels may be called upon years after they have left the College to serve as witnesses in litigation arising from the matters in which they participated – a

concern the College recognized when it decided that students no longer should participate on determination panels.

3. Whether the College should establish a confidential “ombudsperson” to address concerns of students and staff

Faculty who have questions about the Policy, or how individual issues relating to the Policy may be addressed, can raise them confidentially with the office of the Faculty Ombudsperson (p. 10). Other employees and students of course can discuss any questions they may have with the Title IX Office. However, it is a fair question whether creating a confidential resource separate from the Title IX Office would encourage additional victims to come forward for information about options and resources. This may be a good question to include in the next campus climate survey.

4. Whether the College should establish a student “Title IX advisory board”

The Committee has heard that some students are not reporting incidents of sexual misconduct because they “do not trust the process” to address their issues in a timely and effective manner. The Committee recommends that the College consider establishing a student “Title IX advisory board,” which would actively seek out and convey to College administrators, including but not limited to the Title IX Office, student viewpoints on all aspects of the College’s approach to sexual misconduct issues. The Committee believes that such an advisory board could significantly enhance the College’s awareness and understanding of student concerns in this area and thus do a better job addressing them.

5. Changes to the Policy

The Committee believes it has been useful for this group of teaching faculty, administrators, and students to come together to formally review and make recommendations for improving the College’s Sexual Misconduct Policy and the manner in which it is implemented. The Committee believes that a similar effort should occur at least annually. The College may wish to establish a standing Sexual Misconduct Policy review committee to do this work, with the understanding and expectation that committee members will consult as appropriate with their respective constituencies. In the event such a committee is formed, this Committee recommends that any teaching faculty positions be filled by the Academic Governance Committee and/or the Provost. This Committee also recommends that the membership of any such committee involve staggered terms,

so as to achieve the benefits of both some continuity but also some turnover in membership.

Regardless of whether such a standing committee is established, the Committee believes it is important that, going forward, any significant changes to the Policy be made only after consultation with the appropriate committees or other representatives of the faculty, staff, and/or students, as the case may be. For faculty, any significant policy changes first should be reviewed with the Committee on Faculty Affairs and/or Academic Governance Council. For students, any significant policy changes first should be reviewed with the appropriate committee of the Student Government Association. The Committee recognizes that such consultation will not be possible with respect to any changes made in connection with this report, for the beginning of the 2019-2020 academic year.

ADDENDUM A – OPENING SECTIONS OF THE POLICY

The following is a suggested, revised version of the opening sections of the Sexual Misconduct Policy. Language that is materially new or different from the current Policy is highlighted in yellow.

College of the Holy Cross Sexual Misconduct Policy¹

I. Statement of Values and Commitment to Non-Discrimination

The College of the Holy Cross is a community of trust based in the Jesuit tradition whose existence depends on strict adherence to standards of conduct set by its members. Among these are standards regarding human sexuality, any expression of which must affirm the integrity and dignity of oneself and others. Sexual misconduct, in all forms, violates the sanctity of the human body and spirit and will not be tolerated within the College community. The College is committed to providing an environment of well-being, learning, and accountability for its members by preventing the occurrence of sexual misconduct and addressing its effects.

The College rejects and condemns all forms of harassment, wrongful discrimination, retaliation and disrespect and is committed to sustaining a welcoming environment for everyone including those vulnerable to discrimination on the basis of sex, sexual orientation or gender identity. The College prohibits and will not tolerate sexual violence, sexual harassment, or any other form of sexual misconduct. Such behavior violates College policies and may result in disciplinary action, up to and including termination or dismissal from the College.

To review the College's policies regarding discrimination and harassment and related investigation and resolution procedures, please see the following links: [Non-Discrimination Policy](#), [Sexual Misconduct Policy](#) and [discriminatory harassment policy](#).

¹ This amended Sexual Misconduct Policy is effective as of [new date], 2019. The procedures in this Policy generally will apply to complaints made on or after that date while the conduct standards that apply generally will be those in effect at the time of the conduct at issue, unless the Title IX Coordinator determines otherwise in his or her

discretion. Prior versions of this Policy are available at <https://www.holycross.edu/sexual-respect-and-title-ix/overview>.

II. How the College Seeks to Address Sexual Misconduct

A. The Sexual Misconduct Policy

The College's commitment to non-discrimination includes an assurance that the College will not tolerate discrimination or harassment in its community on the basis of sex, sexual orientation or gender identity, including, but not limited to sexual violence, dating or domestic violence, stalking, or retaliation. The College follows through on that commitment, in part, through the implementation of a Sexual Misconduct Policy, which includes [Definitions of Prohibited Conduct](#) and a [Process for Resolving Complaints of Sexual Misconduct](#).

The Policy applies to all College community members, who are responsible for being familiar with and abiding by the Policy at all times.

B. Core Principles Relating to the Sexual Misconduct Policy

In developing and implementing its Sexual Misconduct Policy, the College is committed to the following core principles:

1. The College's policies, procedures, and practices are designed to reduce the incidence of sexual misconduct, stop misconduct when it is found to exist, prevent the misconduct from recurring, and address its effects.
2. If sexual misconduct has occurred, the College wants to know, so that it can take effective action to stop it, prevent it from recurring, and address its effects. The College recognizes that in some cases the persons affected by sexual misconduct will wish to remain anonymous and/or not pursue formal action. The College strongly encourages every person who has been subjected to sexual misconduct or who knows or reasonably believes that someone else has been subjected to such misconduct to come forward to report the matter – and, in the case of its employees, it requires them to do so, unless the employee learned the information in their role as a confidential counseling or pastoral resource or is otherwise exempt from

reporting as a matter of law or College policy. In addition, the College strictly prohibits retaliation against any person who in good faith makes a report of sexual misconduct.

3. Every complaint of sexual misconduct will be addressed promptly, fairly, and equitably.
4. Complaints of sexual misconduct will be investigated, determinations of responsibility will be made, and sanctions for misconduct will be imposed by individuals who are appropriately trained, unbiased, and committed to discharging their responsibilities in accordance with the Policy.
5. The College periodically will review its policies, procedures, and practices to ensure that they are consistent with these core principles. To encourage community input, strengthen trust in the Title IX process, and foster awareness of changes in the Sexual Misconduct Policy, any substantive revisions to the Policy will be made in consultation with appropriate representatives from the faculty, staff and/or student body, except insofar as a change is required by law.

C. The Title IX Coordinator and Title IX Team

The Title IX Coordinator is charged with coordinating the College's program to comply with Title IX of the Education Amendments of 1972. This includes leading the College's efforts to respond to reports of conduct that could trigger the Sexual Misconduct Policy. The Title IX Coordinator and other members of the Title IX Team also are available to meet with any individual to provide information about the implementation of the Sexual Misconduct Policy (including the availability of interim measures, the investigation, and the resolution/sanction process), as well as discussing other resources within the College community and beyond. The Title IX Team, including the Title IX Coordinator, Deputy Title IX Coordinators, and/or other qualified members of the College community, will assist, as necessary, with these efforts.

The Title IX Coordinator at least annually will report to the College community relevant information relating to the Sexual Misconduct Policy, such as the number and types of matters investigated, the number and types of cases in which findings of responsibility were made, the

number and types of sanctions imposed, and the time frames in which cases were resolved.

The College's Interim Title IX Coordinator is:

Jamie Hoag
Interim Director of Title IX Initiatives and Title IX Coordinator
Hogan Campus Center, Room 505
508-793-3336
jhoag@holycross.edu

Where the Title IX Coordinator is listed as the designated point of contact for any role in the Sexual Misconduct Policy, he or she may designate a Deputy Title IX Coordinator or another appropriate member of the College community to assume the role at issue, as necessary. Each of these individuals is available to receive a report from any member of the College community who believes the Sexual Misconduct Policy has been violated. The Deputy Title IX Coordinators also can assist others, including Responding Parties and witnesses, in understanding the College's Sexual Misconduct Policy and procedures.

[list of the Deputy Title IX Coordinators]

ADDENDUM B – CONFLICTS OF INTEREST FOR THE SANCTIONING OFFICIAL

The following is a suggested, revised version of Section VII.B.5.(a), which currently appears at p. 20 of the Sexual Misconduct Policy. The suggested, new language, which essentially tracks the language relating to conflicts in connection with the Determination Panel (p. 25) and the Appeals Panel (p. 29), is highlighted in yellow.

- (a) **Sanctioning Decision.** The College employees responsible for determining sanctions are as follows. As soon as possible, but no later than three (3) calendar days after delivery of the Determination Panel's notification of decision, the Parties should inform the Title IX Coordinator (in writing) of any conflicts of interest in regard to the Sanctioning Official. The Title IX Coordinator, in consultation with other College officials as appropriate, will determine whether a disqualifying conflict of interest exists, in which case the Title IX Coordinator will appoint a different Sanctioning Official. The Title IX Coordinator's decision regarding any conflicts is final.

ADDENDUM C – SANCTION TYPES AND FACTORS

The following is a suggested, revised version of what now appears in Section VII.B.5. of the Sexual Misconduct Policy (pp. 26-28). Language that is materially new or different from the current Policy is highlighted in yellow.

5. Determining Sanctions

- (a) **Sanctioning Decision.** The College employees responsible for determining sanctions are as follows:
- (i) **Students.** Sanctions regarding students and student groups, organizations and teams will be determined by the Associate Dean of Students (or his or her designee), who may do so in consultation with other College officials and after considering any prior College discipline of the Responding Party. Sanctions may be determined during the same meeting in which responsibility is determined, as set forth in Sections VII.B.4(c) and (d).
 - (ii) **Teaching Faculty.** Sanctions regarding teaching faculty will be determined by the Dean of the College (or his/her designee) in consultation with other College officials as appropriate. The Title IX Coordinator will provide the Provost/Dean of the College (“Dean of the College”) with a copy of the Determination Panel’s written notification of its determination of responsibility as well as the Investigative Report and information concerning any prior College discipline of the Responding Party. If the Dean of the College (or his/her designee) determines that a sanction of dismissal is recommended, the sanction will be reviewed under Section VII.B.7(b). The Dean of the College will then provide written notification to the Title IX Coordinator of the action taken with regard to the faculty member.¹⁰

¹⁰ Consistent with Section 9(i), the Dean of the College, in consultation with the Title IX Coordinator, may designate a person who currently holds a leadership position in Academic Affairs to serve in this role.

- (iii) **Exempt Employees, Other Than Teaching Faculty.** Sanctions regarding exempt employees, as defined by the College, will be determined by the Employee's Vice President (or his/her designee) or in the case of an employee in the Athletics Department or who reports to the President, the President's designee. The Director of Human Resources (or his/her designee) will be consulted, and other College officials may be consulted, on any sanction. The Title IX Coordinator will provide the Sanctioning Official with a copy of the Determination Panel's written notification of its determination of responsibility as well as the Investigative Report and information concerning any prior College discipline of the Responding Party.
- (iv) **Non-Exempt Employees and Third Parties.** Sanctions regarding non-exempt employees, as defined by the College, vendors, independent contractors and other third parties will be determined by the Director of Human Resources (or his/her designee), who may consult with other College officials. The title IX Coordinator will provide the Sanctioning Official with a copy of the Determination Panel's written notification of its determination of responsibility as well as the Investigative Report and information concerning any prior College discipline of the Responding Party.

(b) Types of Sanctions.

- (i) **Employees, including Faculty Members.** Sanctions imposed with respect to Responding Parties who are employees or faculty members may include, but are not limited to, one or more of the following: dismissal from employment, non-renewal of an employment contract, suspension (without pay), probation, reprimand, warning, restitution, training and/or counseling, no-contact order, removal from an administrative appointment, removal of one or more job responsibilities, removal from a committee, removal from a leadership position, reassignment of advisees, prohibition against new advisees, limitation or loss of rights or privileges, loss of awards and/or honors, and/or community service.

- (ii) **Students.** Sanctions may include, but are not limited to, one or more of the following: expulsion, suspension, probation, reprimand, warning, restitution, education/counseling, no-contact order, restriction from extracurricular programs or activities, loss of leadership opportunity or positions in activities, housing restriction/relocation, loss or restriction from College employment, limitation or loss of rights or privileges, loss of awards and/or honors, and/or community service.
- (iii) **Student Groups, Organizations and Teams.** Sanctions for groups, organizations and teams may include, but are not limited to, one or more of the following: suspension, revocation or denial of registration or recognition, probation, reprimand, warning, restitution, education, restriction, limitation or loss of rights or privileges, loss of awards and/or honors, and/or community service.

(c) **Considerations.**

In determining an appropriate sanction, the College will take into account the nature and degree of sanction that may be necessary to stop the misconduct, prevent it from recurring, and address its effects and also may take into account any other factors that may lead to a fair and appropriate outcome under the circumstances. Such factors may include, for example, but are not limited to:

- The nature and circumstances of the misconduct, including whether it involved violence, the threat of violence, or coercion; how severe or pervasive it was; whether it occurred once, more than once, or repeatedly; whether it was intentional, willful, or reckless; and whether or to what extent the Party found responsible intended or reasonably should have expected that the conduct would harm the Complaining party or others.
- The impact of the misconduct on the Complaining Party, including whether or to what extent the misconduct has interfered or may interfere with the Complaining Party's education, employment, or other opportunities at the College, and whether or to what extent the misconduct has resulted or may result in physical, emotional, or other harm.

- The impact of the misconduct on the College community, including whether or to what extent the misconduct has interfered or may interfere with an educational, employment, or other aspect of the College environment.
- Any mitigating or aggravating circumstances, such as whether the Party found responsible has a history of other misconduct and/or discipline at the College and whether the Party found responsible accepted responsibility and/or remorse for his or her conduct and its effects.
- The range of sanctions imposed in cases involving similar or analogous circumstances.

(d) Additional Remedies.

The sanctioning authority ... may also identify additional remedies to address the effects of the conduct on the impacted Party. Remedies may include extending or making permanent any interim or safety measures. If a Complaining Party or Responding Party declined or did not take advantage of a specific service or resource previously offered, the College may re-offer the service as applicable or necessary. The Title IX Coordinator also may consider broader remedial action for the campus community, such as increased supervision or monitoring, targeted or increased education and prevention efforts, and review of policies and procedures. In addition, in the Title IX Coordinator may refer any matter raised, but not addressed hereunder, that may potentially violate any other College policy, rule, or procedure to the appropriate College officials to address such matters, irrespective of the finding under this Policy.

ADDENDUM D – NOTIFICATION, IMPLEMENTATION AND ENFORCEMENT OF SANCTIONS

The following is a suggested, revised version of what now appears in Section VII.B.6. of the Sexual Misconduct Policy (p. 28). Language that is materially new or different from the current Policy is highlighted in yellow.

6. Notification, Implementation and Enforcement of Investigation Outcome

Upon completion of Sections VII.B.4 or 5, as necessary, the Title IX Coordinator will inform the parties simultaneously and in writing of (i) the outcome of the disciplinary proceeding; and (ii) the procedures for either party to appeal the result of the disciplinary proceeding. The Title IX Coordinator will also inform other College officials with a legitimate educational or employment interest about the outcome of the finding. As a general matter, those other College officials will include the following:

- If a student has been found responsible – the student’s class dean and other appropriate College officials.
- If a member of the Teaching Faculty has been found responsible – the individual’s department chair, the director of any appropriate academic program and, if applicable, one or more class deans.
- If an exempt employee other than Teaching Faculty has been found responsible – the individual’s direct supervisor.
- If a non-exempt employee has been found responsible – the individual’s direct supervisor.

Notice to these other individuals will be accompanied by a statement that the information may not be further disclosed to anyone else without the specific approval of the Title IX Coordinator, except as necessary to protect the safety of one or more individuals.

The Title IX Coordinator, in consultation with the Sanctioning Official and other College employees as appropriate, is responsible for ensuring that any sanctions or additional remedies are implemented and enforced.

ADDENDUM E – INTERIM MEASURES

The following is a suggested, revised version of what now appears in Section VII.B.1. of the Sexual Misconduct Policy (pp. 20-21). Language that is materially new or different from the current Policy is highlighted in yellow.

1. Initial Steps: Interim Measures

After receiving a report of conduct that could fall under the Sexual Misconduct Policy, the Title IX Coordinator or his or her designee⁶, in consultation with other College personnel as appropriate, will take a number of initial steps. These initial steps are not an investigation. Rather, these initial steps will enable the College to assess the need to take any immediate action to address the safety, health or well-being of the Complaining Party⁷ or others within the College community, and to determine the next steps for investigating the reported conduct.

These initial steps may include, but are not limited to, the following:

- (a) The Title IX Coordinator will contact the Complaining Party and encourage him/her/zie/them to meet to discuss the nature and circumstances of the reported conduct, review relevant documentation that is available and address the need for any interim measures that may be necessary to provide for the Complaining Party's safety, health or well-being and to prevent interference with the Complaining Party's educational, employment, or other opportunities. Such interim measures can include, for example, the issuance of no-contact orders, adjustments to academic schedules, changes to living, dining, transportation, working and/or immigration arrangements, statutorily provided leave to employees pursuant to Mass. G.L. c. 49, §52D. The Title IX Coordinator will assess and implement interim measures in consultation with other College employees as appropriate.
- (b) The Title IX Coordinator, in consultation with other relevant College employees, will assess the reported conduct to determine whether the circumstances pose a threat to the health or safety of the College community, or one or more members of the community, that warrants issuance of a timely warning, a stay-away order for any persons, or any other interim protections, including, but not limited to, the interim suspension of a student, placing an employee on paid or unpaid leave,

temporarily removing an individual from a leadership, advising, or other position, or temporarily suspending or restricting one or more aspects of an individual's activities or privileges prior to completing an investigation. During the interim action, the College reserves the right to prohibit the individual from entering upon the College's property or participating in any College activities absent written authorization from an appropriate College official. The failure of an individual to comply with an interim restriction is a violation of this Policy and may lead to additional disciplinary action. The decision to impose interim restrictions will be communicated by the Title IX Coordinator in writing and will be effective immediately.

- (c) The Title IX Coordinator will notify the Complaining Party about: (a) the availability of the Sexual Misconduct Policy; and (b) the right to report and the right to decline to report the matter to the Department of Public Safety and/or to local law enforcement if the conduct is potentially criminal in nature (and that such a report will not change the College's obligation to potentially investigate the matter, but it may briefly delay the timing of the investigation if a law enforcement agency requests that the College delay its process for a reasonable amount of time to allow it to gather evidence of criminal conduct).
- (d) The Title IX Coordinator will notify the Complaining Party of the available resources for seeking medical treatment, counseling, spiritual guidance, other interim measures and other resources. See Sections IV and V. See College and Community Resources.
- (e) If the Title IX Coordinator determines the reported conduct could, trigger the Sexual Misconduct Policy, he or she will contact the Complaining Party to discuss that determination. In connection with allegations of sexual misconduct, if, at this time, the Complaining Party requests that the process not move forward, the College will weigh that request against the College's obligation to address any risk of harm to the Complaining Party or other individuals in the community and the nature of the incident or conduct at issue. Except in limited circumstances in which a Complaining Party's request not to proceed to investigation is granted, the Title IX Coordinator will proceed to Section VII.V.3. If an investigation or informal resolution will be commenced (and at any other time the Title IX Coordinator determines is appropriate), the Title IX Coordinator will notify the Responding

Party of available resources for seeking medical treatment, counseling, spiritual guidance, interim measures, and other resources.

- (f) If the Title IX Coordinator determines that the reported conduct would not, in any way, trigger the Sexual Misconduct Policy, he or she will advise the Complainant Party of such in writing and refer the reported conduct to the appropriate administrator for handling consistent with any other appropriate College policy. (If new information is subsequently provided, the decision whether or not to investigate the reported conduct may be reevaluated.)